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SUBJECT: REVISED DRAFT CRIMINAL CODE WORRIES ACTIVISTS

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Classified By: AMBASSADOR B. LYNN PASCOE, REASONS 1.4 (b) and (d)

11. (C) Summary: Legal analysts and NGOs told us that the latest draft of the revised Indonesian Criminal Code (KUHP) continues to include controversial provisions on the protection of government officials and state ideology from defamation, and the criminalization of pornography. They feared that these provisions could be used to suppress freedom of expression and to impose "public morality." NGO activists said that the President and the Ministry of Law had not changed these provisions, despite intensive lobbying efforts by human rights activists. Observers - including Law Ministry officials - expect the KUHP to languish in parliament (DPR) for two to three years as legislators debate the code's more controversial provisions, giving us a window of opportunity to influence KUHP's final form. End Summary.

CONTROVERSIAL SECTIONS REMAIN UNCHANGED

12. (C) Bivitri Susanti, Executive Director, Center for Indonesian Law and Policy Studies, asserted that, despite several meetings between NGOs and the Law Ministry, government officials had not incorporated civil society's feedback on the KUHP, which remained virtually unchanged from last year's version (reftel). Describing Indonesian civil society's main concerns as "the defamation section which could be used to enhance government power at the expense of society or the press, the attempts to prescribe morality using anti-pornography, and the death penalty itself", she anticipated that the KUHP would pass from the President's office to parliament without any substantive revisions (note: some Indonesian NGOs oppose the death penalty and believe it should be eliminated by the new KUHP). However Susanti believed that the bill would incite "chaotic debate" in the parliament and languish there for at least two to three years. She noted that this gave civil society, as well as interested foreign governments, a chance to influence the final shape of the code. In this context, Susanti encouraged us to "fund a seminar" on the criminal code and to invite "key legislators, civil society activists and government officials to this conference."

KUHP MAY ENGENDER MUCH DEBATE IN PARLIAMENT

13. (C) Mardjono Reksodiputro, Secretary, National Law Commission and a former member of the committee that drafted the KUHP said that the President Yudhoyono and "certain key advisors" remained deeply uncomfortable with provisions of the KUHP related to criminalizing pornography, as this represented "legislating morality." However he asserted that the President had few reservations about other sections of the code deemed controversial by NGOs and the media - those related to defamation of government officials and state ideology, and the continuation of the death penalty. Mardjono said that the President would not make changes to

the bill - including to the pornography provisions - because "the President lacked the courage and political capital to eliminate the provisions he found disturbing." Mardjono predicted the President would submit the bill to the DPR this year and said legislators would debate it for many years. He agreed that this gave Western governments an important chance to influence the bill.

ANTI-PORN WILL PROVOKE DEBATE

14. (C) Justrida Tara, Director of Criminal Law, Ministry of Law and Human Rights, told us that President Yudhoyono had recently given feedback to the Law Ministry on the KUHP - the latest chapter in the decade long saga to modify the code (reftel). Though she was unwilling to reveal the precise nature of his comments, Justrida asserted that the President had not found the bill's provisions on defamation, anti-pornography, or the continued imposition of the death penalty, controversial. She anticipated that the President would present the bill to parliament (DPR) by the end of the year. Justrida expected little debate in the DPR on the provisions that have drawn much media and NGO attention recently - those related to defamation of the government and imposition of the death penalty - but admitted that the KUHP's anti-pornography sections had the potential to provoke serious and protracted debate among legislators. Justrida estimated that the revised criminal code would be passed by the DPR by a distant 2009.

AWALUDIN CLAIMS PARTS OF KUHP STILL SENSITIVE

15. (C) In a meeting with Ambassador Pascoe on September 8,

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Law Minister Hamid Awaludin said that the President had found several provisions of the KUHP "sensitive", especially those that protected government officers from defamation, criminalized pornography, and which continued to impose the death penalty for certain crimes. Awaludin evaded answering the Ambassador's questions on the KUHP's provision on insults to religion and its implication for free speech. When pressed about the potential for government misuse of provisions related to slander and defamation to suppress freedom of the press, Awaludin denied this possibility.

16. (C) Comment: The much anticipated final draft of the criminal code remains deeply contentious among NGOs for its provisions on defamation, anti-pornography, and continuation of the death penalty. Observers expect the bill to languish in the DPR for many years. We should take advantage of this substantial window of opportunity, to cooperate with NGOs to influence the defamation and anti-pornography sections of the bill. End Comment.

PASCOE